

complaint

Mr R's complaint is that Ulster Bank Ltd ("Ulster Bank") caused him a large financial loss due to its' processes.

background

Mr R was expecting a large bonus from his employer, of nearly £88,000, which was due to be paid into his Ulster Bank account by BACS on Monday 12 September 2016.

He's told us that he had a gambling addiction, which both he and his partner were aware of at the time, and which they were concerned could put this money at risk of being spent.

So they'd been waiting for the bonus, with a specific plan as to what to do with the money as soon as it was available. This meant getting it out of Mr R's account quickly in order to pay various bills and protect the balance.

However, on Saturday 10 September Mr R saw on his online account that the money was already in, and he was able to use his online banking facility and his debit card to make some payments and balance transfers.

Seeing that the money was available sooner than he expected, Mr R was worried he'd gamble it away. So he wanted to be able to transfer it back out again as quickly as possible, largely into his partner's account, but also to repay some balances on other cards.

But, on the Saturday, having exhausted his daily transfer limits on his card, and online, he started to panic as most of the balance still remained in his account. So he went into his local branch the same day to ask to withdraw the remaining money – some £50,000.

But the branch staff wouldn't let him do that, and explained that while the funds showed in his account online, the money wouldn't actually clear and be available to withdraw until the Monday morning, which was the next business day. So it told Mr R he'd only be able to withdraw £500 from its ATM meantime.

Ulster Bank's since confirmed that it could only let a customer withdraw a maximum of £5,000, in branch, but that this was at a manager's discretion.

Mr R said he was very upset and panicked when he realised he couldn't get his money. But he didn't tell the cashier why he needed to make the withdrawal, and that his specific concern was that he would spend the money if he continued to have access to it.

And this is what happened. Mr R used his debit card to spend what was left in his account. This meant that by 15 September there was nothing left, and he was also £15,000 overdrawn.

Mr R had already spent this £15,000 on his debit card. But because the merchants concerned had delayed in collecting the funds, it looked to him that he still had that money available. So on 15 September he transferred it into an account with another bank. This meant that when the debit card transactions were collected that same day, he became overdrawn by that amount.

Mr R complained to Ulster Bank, saying that its' processes caused him to lose £65,000 in total, and that he wanted it to refund him.

But Ulster Bank didn't think it was responsible for his losses. It said it had followed its own processes correctly, and as Mr R hadn't told it about his gambling problem, and that the reason he needed to get his money out of his account urgently was to keep it safely away from him, that it couldn't have done anything differently to avoid what had happened.

Mr R didn't agree, so complained to our service.

Our adjudicator looked into things, and concluded that while Ulster Bank's processes on receiving and clearing BACS funds into accounts perhaps weren't as clear and helpful as they could have been, that it hadn't made a mistake, or done anything to be held responsible for Mr R's losses. She said the money wasn't due to clear into his account until Monday 12 September 2016, so he couldn't have taken it all out any earlier than this. On this basis, she couldn't ask it to refund him.

But Mr R still didn't agree. He thought both Ulster Bank, and our adjudicator, were wrong. And he mentioned that he felt moral judgements were being made about him, and his addiction.

So he asked for an ombudsman to review his complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I think our adjudicator was right to say we can't ask Ulster Bank to refund Mr R for his financial loss.

I entirely appreciate how upsetting this decision will be for Mr R, and the significant practical impact it's bound to have on him, but I'll explain why I've reached it and why I think it's fair.

daily transfer limit

The fact Mr R couldn't transfer more than £20,000 online per working day is due to an internal policy that Ulster Bank's entitled to set for itself and which isn't unreasonable. So I'm not going to say it was wrong to have, and to follow, this policy.

branch's policy on withdrawals

I also don't think Ulster Bank's failure to give Mr R his money in the branch on the Saturday was a failing.

Mr R's referenced terms and conditions, and FCA guidance, in relation to this point, all of which I've considered. But it's also important to refer to the national protocol that the British Banking Association's put together.

Whilst the starting position in law may be that a bank has no right to stop a person withdrawing their own funds, this protocol accepts there are occasions when customers are

vulnerable and that, where those customers ask for large cash withdrawals, a more proactive approach by the bank might be warranted.

So there's a protocol to be followed where an older or vulnerable customer wishes to make a cash withdrawal that's outside their normal routine. And I think it's safe to say that a withdrawal of £50,000 was almost certainly outside of Mr R's normal routine.

By Mr R's own admission, he left Ulster Bank in an anxious and angry state. And I think this makes a compelling argument that its' decision to refuse to provide the cash to him was a reasonable one at the time.

There's always a delicate balance for branch staff to strike between not being overly obtrusive or inquisitive when a customer makes requests for their own cash, and in protecting them from scams. And even if a staff member took a course of action that I personally wouldn't, unless I thought that behaviour was wholly unreasonable or lacking in any sort of logic, I wouldn't be able to uphold a complaint on that basis.

For example, if the staff member declined to provide Mr R with any money, then even if I thought a better approach would have been to have asked some probing questions first, I think whether to do that's a legitimate exercise of the cashier's judgement when they have responsibilities to customers. And it's not one I should interfere with unless I considered the approach taken to be wholly unreasonable, and something that no other reasonable person would do when faced with the same situation.

We must bear in mind that had Ulster Bank provided the money without querying what was happening, and it had then turned out to be a scam, it potentially could have been held responsible for a significant loss for failing to take sufficient steps to protect its customer.

Mr R, by his own admission, didn't tell the branch staff he wanted the money withdrawn to prevent him spending it on gambling. And we can't reasonably expect Ulster Bank to make adjustments without being aware of the relevant facts.

As per Mr R's evidence, the branch cashier may have told him it was impossible to give him the money, as opposed to this decision being at the branch manager's discretion. And I expect this was because at the time she needed to be able to explain her position as neutrally as possible when faced with a very unhappy and agitated customer. So what she gave Mr R as her reason might not have been strictly true, but given the situation, and the manner in which he presented, I think it probably was reasonable for her to decline the withdrawal.

BACS payment clearance

One of the most frustrating features of this complaint for Mr R has been the fact that on the one hand he's been told by Ulster Bank that the money wouldn't have cleared into his account until Monday 12 September, while in the meantime, and over the weekend immediately before this, he's been able to access this money in other ways.

I can see why this doesn't seem fair to him. And I know that Ulster Bank has taken some feedback on this particular clearing process. However, it's not this services' role to tell banks how to run their payment systems, as we're not a regulator.

So, taking the BACS clearing system as it operated at the time, when Mr R went into the branch on the Saturday and asked to withdraw the balance in his account, I think the cashier was right to say she couldn't let him do that. Not only because of the protocol I've already referred to, but also because the money hadn't yet cleared, and wasn't due until the Monday.

preventative account block

It doesn't logically follow, in my view, that the branch's decision to not let Mr R withdraw his cash should then mean it had to put a block on his account.

I've seen from Mr R's submissions that he feels that in failing to do this he was able to gamble the rest of the money away using his debit card.

The only way Ulster Bank could have prevented the transactions was by blocking both the account and the debit card. But that would have been an extreme move. And I don't think it's fair or reasonable for us to say this is something a bank must do in all cases where a customer goes to branch and asks to make a suspicious cash withdrawal.

It's also worth noting that had Ulster Bank done this, Mr R wouldn't have been able to use his account at all, even for basic goods such as food, essential bills, etc. He wouldn't have had access to any funds at all over a weekend until the block was lifted, so it would have been a big step for Ulster Bank to take unless it had a compelling reason to do so.

Ultimately, and by his own admission, Mr R also didn't contact Ulster Bank after the branch visit to tell it he needed to be prevented from having access to his money otherwise he could gamble it away.

Again, this means I can't reasonably expect Ulster Bank to have done anything else after Mr R's branch visit, as it wasn't on notice that both he and his money were vulnerable.

overdraft

Mr R believes Ulster Bank caused him to go overdrawn by £15,000. But I'm afraid I don't agree. It's unfortunate that the timing of these merchants collecting the money he'd spent coincided with a payment of the same value being transferred out of his account. But ultimately it's still money Mr R had already had the benefit of. Whether or not his account should have shown that these funds were still available to him to use, it's a lot of money to fail to account for.

It's Mr R's own responsibility to keep a track of his spending. And while I do appreciate that he might not have been able to do this effectively, given his addiction, that doesn't mean it's then fair to make it Ulster Bank's responsibility.

account marker

Mr R's said he wants any markers added to his account to be removed. But Ulster Bank's said it's satisfied that anything it's added has been done so legitimately and correctly. And as I've not seen any evidence to show this isn't the case, I'm not going to ask it to do anything here.

summary

Overall, what's happened to Mr R is genuinely very unfortunate. But for all of these reasons, I don't think that anything Ulster Bank did, or failed to do, would make it fair or appropriate for me to hold it responsible for his losses.

my final decision

My final decision is that I won't be asking Ulster Bank Ltd to take any further action to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 May 2017.

Ashley L B More
ombudsman